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In re Application of :
SCHNIGENBERG, Jörn :
Application No.: 09/805,719 :
Filing Date: 26 July 1999 : DECISION ON PETITION
Attorney Docket No.: 070255.0602 :
For: METHOD FOR THE PRODUCTION OF A :
CATALYTIC CONVERTER HOUSING :
USING A WINDING-TENSIONING :

This decision is in response to applicant's "PETITION FOR REVIVE UNINTENTIONALLY ABANDONED APPLICATION" filed in the Patent and Trademark Office (PTO) on 27 February 2001.

BACKGROUND

On 26 July 1999, applicants filed international application PCT/EP99/05320, which claimed a priority date of 26 August 1998 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 05 March 2000. A Demand for international preliminary examination was filed prior to expiration of 19 months from the priority date. Accordingly, the last day of the thirty-month period for paying the basic national fee for entry into the national stage in the United States was 26 February 2001.

On 27 February 2001, applicant filed the instant petition which stated, "[u]nder the provisions of 37 C.F.R. § 1.137(b), please revive, as to the United States the above-reference PCT international application for which Continuation status is being applied for under 35 U.S.C. §120."

DISCUSSION

International application PCT/EP99/05320 became abandoned as to the United States of America at midnight on 26 February 2001 for failure to pay the basic national fee.

A. Conflict In Filing Instructions

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.494(f):

The documents and fees submitted . . . must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the

submission will be considered as being made under 35 U.S.C. 111.

In addition, section 1893.03(a), page 1800-114 of the MPEP states that:

If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

On 27 February 2001, applicant submitted a petition to revive under 37 CFR 1.137 which stated, "[u]nder the provisions of 37 C.F.R. § 1.137(b), please revive, as to the United States the above-reference PCT international application for which Continuation status is being applied for under 35 U.S.C. §120." The statement is inconsistent with an intent to enter the national stage of the PCT under 35 U.S.C. 371. Accordingly, the original papers deposited on 27 February 2001 will be treated as a filing under 35 U.S.C. 111(a).

B. Petition under 37 CFR 1.137(b)

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

With regard to Item (1), the proper response was the filing of the continuing application.

As to Item (2), the appropriate petition fee of \$1240.00 has been submitted.

As to item (3), the statement "the delay in filing the continuing application was unintentionally" will be construed as "[t]he entire delay from the due date for filing a national phase application until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

Applicants are entitled to claim benefit under 35 U.S.C. 120 and 365(c) of the filing date of the international application for the common subject matter, since this application (Application No. 09/805,719) and the international application (PCT/EP99/05320) designating the United States were copending on 27 February 2001. In order to obtain benefit of the earlier international application, applicant must amend the beginning of the specification of this application by inserting a proper reference to the parent international application. An appropriate passage would be, "This is a continuation of international application PCT/EP99/05320, filed 26 July 1999, which designated the United States and is now abandoned."

CONCLUSION

For the reasons discussed above, applicant's petition to revive international application PCT/EP99/05320 is **GRANTED**.

International application no. PCT/EP99/05320 is being revived for purposes of continuity only and since continuity has been established by this decision reviving the international application, the international application is again abandoned in favor of the continuing application number 09/805,719.

The present application will then be forwarded to Art Unit 1764 for examination in due course.



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